

1017--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the family court act and the criminal procedure law, in relation to pre-dispositional and pre-sentence investigations in family offense cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 4 of section 221-a of the executive law, as
2 amended by chapter 368 of the laws of 2013, is amended to read as
3 follows:
4 4. Courts and law enforcement officials, including probation officers,
5 and employees of local correctional facilities and the department of
6 corrections and community supervision who are responsible for monitor-
7 ing, supervising or classification of inmates or parolees shall have the
8 ability to disclose and share information with respect to such orders
9 and warrants consistent with the purposes of this section, subject to
10 applicable provisions of the family court act, domestic relations law
11 and criminal procedure law concerning the confidentiality, sealing and
12 expungement of records. DESIGNATED REPRESENTATIVES OF A LOCAL PROBATION
13 SERVICE SHALL HAVE ACCESS TO INFORMATION IN THE STATEWIDE REGISTRY OF
14 ORDERS OF PROTECTION AND WARRANTS NECESSARY IN ORDER TO RESPOND TO A
15 JUDICIAL REQUEST FOR INFORMATION PURSUANT TO SUBDIVISION SIX OF SECTION
16 EIGHT HUNDRED TWENTY-ONE-A OF THE FAMILY COURT ACT, SUBDIVISION SIX-A OF
17 SECTION 530.12 OF THE CRIMINAL PROCEDURE LAW OR, INsofar AS THEY INVOLVE
18 VICTIMS OF DOMESTIC VIOLENCE AS DEFINED BY SECTION FOUR HUNDRED
19 FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, SECTION 530.13 OF THE CRIMINAL
20 PROCEDURE LAW, OR TO PREPARE AN INVESTIGATION AND REPORT IN PROCEEDINGS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD05317-02-4

1 CONDUCTED PURSUANT TO SECTIONS 351.1, SIX HUNDRED FORTY-TWO, SIX HUNDRED
2 FIFTY-SIX, SIX HUNDRED SIXTY-TWO, SEVEN HUNDRED FIFTY, EIGHT HUNDRED
3 THIRTY-FIVE AND SUBDIVISION (B) OF SECTION ONE THOUSAND FORTY-SEVEN OF
4 THE FAMILY COURT ACT OR ARTICLE THREE HUNDRED NINETY OF THE CRIMINAL
5 PROCEDURE LAW.

6 S 2. The section heading and subdivision (a) of section 835 of the
7 family court act, as amended by chapter 529 of the laws of 1963, are
8 amended to read as follows:

9 Sequence of hearings; PROBATION INVESTIGATIONS AND REPORTS.

10 (a) Upon completion of the fact-finding hearing, the dispositional
11 hearing may commence immediately after the required findings are made.
12 IN AID OF ITS DISPOSITION, THE COURT MAY ADJOURN THE PROCEEDING FOR AN
13 INVESTIGATION AND REPORT BY A LOCAL PROBATION SERVICE. FOR THE PURPOSES
14 OF THIS ARTICLE, THE PROBATION INVESTIGATION AND REPORT MAY INCLUDE, BUT
15 IS NOT LIMITED TO: THE PRESENCE OR ABSENCE OF AGGRAVATING FACTORS AS
16 DEFINED IN PARAGRAPH (VII) OF SUBDIVISION (A) OF SECTION EIGHT HUNDRED
17 TWENTY-SEVEN OF THIS ARTICLE, THE EXTENT OF INJURIES OR OUT-OF-POCKET
18 LOSSES TO THE VICTIM WHICH MAY FORM THE BASIS FOR AN ORDER OF RESTITU-
19 TION PURSUANT TO SUBDIVISION (E) OF SECTION EIGHT HUNDRED FORTY-ONE OF
20 THIS ARTICLE, THE HISTORY OF THE RESPONDENT WITH RESPECT TO FAMILY
21 OFFENSES AND ORDERS OF PROTECTION IN THIS OR OTHER COURTS, WHETHER THE
22 RESPONDENT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER THE
23 RESPONDENT IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF
24 SUCH FIREARMS.

25 S 3. Subdivision 3 of section 390.20 of the criminal procedure law is
26 amended to read as follows:

27 3. Permissible in any case. For purposes of sentence, ISSUANCE OF AN
28 ORDER OF PROTECTION PURSUANT TO SUBDIVISION FIVE OF SECTION 530.12 OF
29 THIS CHAPTER OR, INSOFAR AS THEY INVOLVE VICTIMS OF DOMESTIC VIOLENCE AS
30 DEFINED BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW,
31 SECTION 530.13 OF THIS CHAPTER, the court may, in its discretion, order
32 a pre-sentence investigation and report in any case, irrespective of
33 whether such investigation and report is required by subdivision one or
34 two OF THIS SECTION.

35 S 4. Subdivision 4 of section 390.30 of the criminal procedure law, as
36 amended by chapter 618 of the laws of 1992, the opening paragraph as
37 amended by section 50 of part A of chapter 56 of the laws of 2010, is
38 amended to read as follows:

39 4. Abbreviated investigation and short form report. In lieu of the
40 procedure set forth in subdivisions one, two and three of this section,
41 where the conviction is of a misdemeanor OR FAMILY OFFENSE, AS DEFINED
42 IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, OTHER THAN A FELO-
43 NY, the scope of the pre-sentence investigation may be abbreviated and a
44 short form report may be made. The use of abbreviated investigations
45 and short form reports, the matters to be covered therein and the form
46 of the reports shall be in accordance with the general rules regulating
47 methods and procedures in the administration of probation as adopted
48 from time to time by the commissioner of the division of criminal
49 justice services pursuant to the provisions of article twelve of the
50 executive law. No such rule, however, shall be construed so as to
51 relieve the agency conducting the investigation of the duty of investi-
52 gating and reporting upon:

53 (a) the extent of the injury or economic loss and the actual out-of-
54 pocket loss to the victim including the amount of restitution and repara-
55 tion sought by the victim, after the victim has been informed of the
56 right to seek restitution and reparation, or

1 (b) IN A CASE INVOLVING A FAMILY OFFENSE, AS DEFINED IN SUBDIVISION
2 ONE OF SECTION 530.11 OF THIS CHAPTER, THE DEFENDANT'S HISTORY OF FAMILY
3 OFFENSES AND ORDERS OF PROTECTION, INCLUDING VIOLATIONS, IN PROCEEDINGS
4 OR ACTIONS IN THIS OR OTHER COURTS, THE EXTENT OF INJURIES OR THREATS OF
5 INJURY TO THE COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSE-
6 HOLD, THE USE OR THREATENED USE OF DANGEROUS INSTRUMENTS AGAINST THE
7 COMPLAINANT OR MEMBERS OF COMPLAINANT'S FAMILY OR HOUSEHOLD, WHETHER THE
8 DEFENDANT IS IN POSSESSION OF ANY FIREARMS AND, IF SO, WHETHER DEFENDANT
9 IS LICENSED OR OTHERWISE AUTHORIZED TO BE IN POSSESSION OF SUCH
10 FIREARMS, THE EXTENT TO WHICH THE DEFENDANT POSES AN IMMEDIATE AND ONGO-
11 ING DANGER TO THE COMPLAINANT OR MEMBERS OF THE COMPLAINANT'S FAMILY OR
12 HOUSEHOLD AND ANY OTHER INFORMATION RELEVANT TO THE ISSUE OF WHETHER AN
13 ORDER OF PROTECTION, IN ADDITION TO ANY OTHER DISPOSITION, SHOULD BE
14 ISSUED IN ACCORDANCE WITH SUBDIVISION FIVE OF SECTION 530.12 OF THIS
15 CHAPTER, OR

16 (C) any matter relevant to the question of sentence OR ISSUANCE OF AN
17 ORDER OF PROTECTION that the court directs to be included in particular
18 cases.

19 S 5. This act shall take effect on the ninetieth day after it shall
20 have become a law.